

CHAPTER 618

H.P. 1679 - L.D. 2179

An Act Regarding the Clearing of Vegetation in Areas Adjacent to Protected Natural Resources

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the provisions of this legislation must take effect immediately to provide the statutory basis for major substantive rules authorized to be finally adopted 90 days after adjournment of the Legislature; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-B, sub-§9, as amended by PL 1995, c. 460, §2 and affected by §12, is further amended to read:

9. River, stream or brook. "River, stream or brook" means a channel between defined banks. A channel is created by the action of surface water and has 2 or more of the following characteristics.

A. It is depicted as a solid or broken blue line on the most recent edition of the U.S. Geological Survey 7.5-minute series topographic map or, if that is not available, a 15-minute series topographic map.

B. It contains or is known to contain flowing water continuously for a period of at least 3 6 months of the year in most years.

C. The channel bed is primarily composed of mineral material such as sand and gravel, parent material or bedrock that has been deposited or scoured by water.

D. The channel contains aquatic animals such as fish, aquatic insects or mollusks in the water or, if no surface water is present, within the stream bed.

E. The channel contains aquatic vegetation and is essentially devoid of upland vegetation.

"River, stream or brook" does not mean a ditch or other drainage way constructed, or constructed and maintained, solely for the purpose of draining storm water or a grassy swale.

Sec. 2. 38 MRSA §480-C, sub-§1, as repealed and replaced by PL 1995, c. 460, §4 and affected by §12, is amended to read:

1. Prohibition. A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to ~~and operated in such a manner that material or soil may be washed into~~ any of the following:

A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or

B. Freshwater wetlands consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peatlands dominated by shrubs, sedges and sphagnum moss.

A person may not perform or cause to be performed any activity in violation of the terms or conditions of a permit.

Sec. 3. 38 MRSA §480-D, sub-§3, as amended by PL 1993, c. 296, §2, is further amended to read:

3. Harm to habitats; fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

A. Avoiding an impact altogether by not taking a certain action or parts of an action;

B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;

C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;

D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or

E. Compensating for an impact by replacing the affected significant wildlife habitat.

Sec. 4. 38 MRSA §480-Q, sub-§7-A, as amended by PL 2001, c. 431, §6, is further amended to read:

7-A. Forestry. Forest management activities, including associated road construction or maintenance, in or adjacent to an existing forested wetland, or a harvested forested wetland or adjacent to a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B, as long as:

A. The activity results in a forest stand that meets the minimum stocking requirements in rules adopted pursuant to Title 12, section 8869. This requirement takes effect when those rules are adopted;

B. The activity meets ~~permit by rule~~ permit-by-rule standards in rules adopted pursuant to this article, for any road crossing of a river, stream or brook, or for any soil disturbance adjacent to ~~a great pond, river, stream or brook~~ a protected natural resource pursuant to section 480-C, subsection 1, paragraphs A and B and the commissioner is notified before the forest management activity commences;

C. ~~The forested wetland~~ protected natural resource is not mapped as a significant wildlife habitat under section 480-I; and

D. Any road construction is not used to access development but is used primarily for forest management activities, unless the road is removed and the site restored to its prior natural condition. Roads must be the minimum feasible width and total length consistent with forest management activities. This exemption does not apply to roads that provide access to development in a subdivision as defined in Title 30-A, section 4401, subsection 4, for the organized portions of the State, or Title 12, section 682, subsection 2-A, including divisions of land exempted by Title 12, section 682-B, for portions of the State under the jurisdiction of the Maine Land Use Regulation Commission-;

Sec. 5. 38 MRSA §480-Q, sub-§§23, 24 and 25 are enacted to read:

23. Cutting or clearing subject to mandatory shoreland zoning laws. Cutting or clearing of upland vegetation adjacent to those protected natural resources listed in section 480-C, subsection 1, paragraph A or B for a purpose other than forest management as long as:

A. The cutting or clearing is subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter I, article 2-B; or

B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3,

subchapter I, article 2-B, vegetation within the adjacent area is maintained as follows:

(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be constructed for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;

(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.

(a) For the purposes of this subparagraph, a "well-distributed stand of trees and other natural vegetation" is defined as maintaining a rating score of 8 or more points in a 25-foot by 25-foot square area as determined by the following rating system.

(i) A tree with a diameter at 4 1/2 feet above ground level of 2 to 4 inches has a point value of one.

(ii) A tree with a diameter at 4 1/2 feet above ground level of more than 4 inches and up to and including 12 inches has a point value of 2.

(iii) A tree with a diameter at 4 1/2 feet above ground level of more than 12 inches has a point value of 4.

(b) In applying this point system:

(i) The 25-foot by 25-foot square plots must be established where the landowner or lessee proposes clearing within the required buffer;

(ii) Each successive plot must be adjacent to, but may not overlap, a previous plot;

(iii) Any plot not containing the required points may have no vegetation

removed except as otherwise allowed by this subsection; and

(iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this subsection;

(3) In addition to the requirements of subparagraph (2), no more than 40% of the total volume of trees 4 inches or more in diameter, measured 4 1/2 feet above ground level, is selectively cut in any 10-year period;

(4) In order to protect water quality and wildlife habitat, existing vegetation under 3 feet in height and other ground cover is not removed except for construction of a footpath as provided in subparagraph (1);

(5) Tree branches are not pruned except on the bottom 1/3 of the tree as long as tree vitality will not be adversely affected; and

(6) In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe or dead trees results in the creation of cleared openings in excess of 250 square feet, these openings are replanted with native tree species unless there is existing new tree growth.

Cleared openings legally in existence on September 1, 2002 may be maintained but may not be enlarged.

This subsection applies to an area with vegetation composed primarily of shrubs, trees or other woody vegetation without regard to whether the area was previously cut or cleared;

24. Existing lawns and gardens. Maintenance, but not enlargement of, lawns and gardens in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B; and

25. Existing agricultural fields and pastures. Maintenance, but not enlargement of, agricultural fields and

pastures in existence on September 1, 2002 that are adjacent to a river, stream or brook not regulated by a municipality under chapter 3, subchapter I, article 2-B.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.